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**PICKLED, GOLDEN OR CURATE'S, WHAT SORT OF EGG WILL THE
PLANNING SYSTEM BE UNDER THE COALITION?**

THE POLITICAL CONTEXT

1. Politicians respond to populist stimuli. That is not a criticism. In a democracy, they will inevitably reflect us back at ourselves – whether we like what we see or not. Before the election, the Conservatives, in particular, identified bureaucracy and “the nanny state” as unpopular features of the then Government’s habit of thought. The observation was not off the mark.
2. On the other hand, the Conservatives’ own history as the “nasty party” meant that the straight reaction – simply to “roll back the frontiers of the state” and loosen the limits within which individuals can do what they like – was not open to them (even had they wanted it to be). The “Big Society” and “localism”, which are the response that the Conservative manifesto offered, are now the themes of the Coalition Government.
3. In their Foreword to *The Coalition: Our Programme for Government*, Messrs. Cameron and Clegg claimed to:

“share a conviction that the days of big government are over; that centralisation and top-down control have proved a failure ... that the time has come to disperse power more widely in Britain today”.

They spoke of their “determination to oversee a radical redistribution of power away from Westminster and Whitehall to councils, communities and homes across the nation”.

4. The language is interesting. It chimes with the popular distaste for the nanny state without offending the popular distaste for deregulation. Indeed, the title given to the whole idea (the Big Society) is a careful and ostentatious rejection of Mrs. Thatcher's 'there is no such thing as society'¹. There is enough in the language to give some hope to those who think that, in places, there is simply too much power – too much control exercised over what companies and individuals choose to do. Nonetheless, it seems to me that the real emphasis (at least in the planning context) is not on there being less power but on a change in the identity of those who wield it: in planning, very largely, the emphasis is on “away from Whitehall and Westminster to councils, communities” and not on “and homes”.
5. I consider this an important distinction which has wide reaching manifestations. There can be philosophical debate about the extent to which my freedom of manoeuvre should properly be limited for the good of society. Once that debate has been decided in favour of my being controlled, a subsequent task is to identify the body that will do the controlling; it seems to me that that is a matter not of philosophy but of practicalities. The practical questions are (or include):
- Who will exercise that control most fairly?
 - Who will exercise it most efficiently?
 - Who is best place to take into account and weigh the factors relevant to the particular control being exercised (both the local considerations and the wider considerations)? and
 - Who is best placed to exercise control in a way that secures public acceptance of the decision?

It seems to me that the answers to those questions will differ depending on the subject matter of the decision. It also seems to me that mistakes can be made if those pragmatic questions are approached with a philosophical preconception. There are practical advantages in having decisions taken centrally – harsh and broader imperatives are more likely to be given appropriate weight. There are practical advantages in taking a decision as

¹¹ Indeed, it carries echoes of the “Great Society” which was central to the election campaign of Lyndon Johnson in 1964 and was used to justify much of the debt that his administration amassed.

close to the parish pump as possible – the local populace can feel more involved. But, either way, the advantages are pragmatic.

6. Intriguingly, the language of localism in *The Coalition: Our Programme for Government* does not represent a complete abnegation of the notion that Government knows best. Messrs. Cameron and Clegg tell us that:

“... there has been the assumption that central government can only change people’s behaviour through rules and regulations. [Their] government will be a much smarter one, shunning the bureaucratic levers of the past and finding intelligent ways to encourage, support and enable people to make better choices for themselves”.

Albeit in a different context from the subject matter of this paper, Grant Shapps, the Housing Minister, talked of “forcing everybody into an agreed position”².

7. In broad political terms, localism as a broad idea is broadly attractive. It is difficult for anyone to be deeply offended by it. However, like all notions that are pleasing to all, it contains, if not contradictions, tensions that will be difficult to reconcile. These emerge when one starts to consider how the broad themes are to be put into practice in particular fields. The planning system presents a good example of the problem.

THE PLANNING SYSTEM – WHAT IS IT FOR?

8. In a moment, I want to turn to the tensions which the planning system throws up, to consider what (thus far) the Government has said about them and to express my views on the wisdom (or otherwise) of what is slowly unfolding. Before I do so, there are two preliminary steps. The first is to say something about the lights by which we should judge the planning system. That involves asking the question: “what do we want the planning system to do for us”. That is the subject of this section of the paper. The second preliminary step (which is the subject of the next section) is to identify as briefly as may be the relevant features of the system as it stands.

² Describing to the Communities and Local Government Committee of the House of Commons, the Government’s expectation of what will be required to resolve issues concerning the Housing Revenue Account.

9. Before the election, the Conservatives produced a policy document (which it described as a Green Paper) entitled *Open Source Planning*. According to *The Coalition: Our Programme for Government*, it contains the “principles” on which the Government will “radically reform the planning system”. The Executive Summary of *Open Source Planning* describes the purpose of the planning system as being

“... to reconcile in the most equitable way possible, competing economic, social and environmental priorities, at the national and local level”.
10. As far as it goes that is an admirable and pithy statement. It recognises that the system has to recognise competing priorities. It recognises that some priorities are local and some are national. It is reasonable to take it (from what is said elsewhere in the document or has subsequently been said by ministers) that it recognises that, in this context, ‘local’ is a word of variable meaning; some developments have ramifications that do not go far beyond the parish pump; some have district wide importance, some have regional implications. The relevant areas change according to the subject matter³.
11. Importantly, the definition recognises that the competing priorities need to be reconciled “in the most equitable ... way”. One of the great challenges for any system which has to decide between competing priorities and competing aspirations is not just to produce an equitable result but to produce a result accepted as equitable by those who sought a different result. As I discuss further below, I am concerned whether the shape of the system that is emerging will achieve that aim. However, as equity is a central aim, one can hope that the Government has an open mind to suggestions to improve the practical achievement of that aim.
12. *Open Source Planning*’s definition of the purposes of the system is sufficient for an Executive Summary, but it is not enough, on its own, to identify the

³ This is all obvious stuff – although I do recall being a little puzzled when I first came to the planning bar about the description of, say, designations being of interest limited geographically. What was it, I wondered, about an area of countywide wildlife importance that made that importance peter out at the county boundary?

attributes that the system must have. What follows may be a glimpse of the obvious; but it is also a glimpse of what is obviously important to the formulation of an efficient and equitable planning system.

13. There are some things that can be expected and others which cannot. There are some matters on which there is a consensus and others on which there is not. There are some interests protected by law and others which are not. For example, there will always be a need for minerals for the construction industry; but there will be different views about the quantity of minerals that need to be available; and the balance of importance between the economic advantages of exploiting minerals and the environmental impact of that exploitation will differ according to whether you work in the construction industry or live near a quarry.

14. The best planning system needs:
 - (a) to identify as far as is reasonably practicable what provision should be planned for;
 - (b) consequently to have appropriate mechanisms by which those matters can be properly investigated using the best information and expertise available;
 - (c) and appropriate mechanisms by which all competing interests can be weighed in the balance;
 - (d) to carry out that balancing exercise by means of a process that commands the acceptance of all of the parties involved (from the minerals operator to the neighbouring resident);
 - (e) to conclude that balancing exercise expeditiously;
 - (f) to recognise that unexpected events will occur and that unexpected opportunities will present themselves;
 - (g) to produce a framework within which the unexpected can be judged – a framework which is sufficiently clear to satisfy those involved (developers, threatened residents and all others) that the decision will be coherent and consistent, but which is also sufficiently

flexible to ensure unexpected opportunities are not wasted;

- (h) to provide a means of adjudicating between the aspirations of a landowner for his land and the interests of others that is both equitable and efficient;
- (i) to provide a means of policing the system so that unacceptable breaches do not endure; and
- (j) it needs to do all these things across a wide range of matters: housing, retail, industrial, warehousing, heritage, environment, sanitation, education, recreation and so on.

15. We ask a great deal from the system.

THE PRESENT SYSTEM

16. There are, I think, four, overlapping, elements to any planning system:
- (i) policy: the identification of the aims that the system is trying to achieve in the future (whether it be the number of houses, the retail offer, the protection of conservation areas and listed buildings or whatever), of the steps to be taken to promote those aims and the tests to be applied to decide whether proposals are consistent with those aims;
 - (ii) decision making: the process by which decisions whether to grant planning permission are taken and reviewed;
 - (iii) the agencies by which the aims (particularly of regeneration) are to be promoted; and
 - (iv) enforcement against breaches of control.

Policy

17. At present, a decision should be taken in accordance with the development plan unless material considerations indicate otherwise. If a consideration is not material, it is left out of account. So, for example, as there is no private

right to a view, the fact that a development obscures the view from my bedroom is not, of itself, a reason to refuse it planning permission.

18. The identity of the development plan is in a state of flux. The last Government introduced a new arrangement to replace the two part development plan of yore (Structure Plan at the county level and Local Plan at the district level) with a new two part development plan: Regional Spatial Strategies (RSSs) at the regional level and Local Development Frameworks (LDFs) at the district level⁴. The change from one arrangement to the other was taking so much time that, by the election, differing degrees of progress had been made in different locations. RSSs, as they emerged, were bulky documents containing a wide range of policies. Although they contained some peculiar policies (e.g. policy CC5 of the South-East's RSS was for supporting an aging population), they were notable for identifying the requirement for housing numbers (and giving broad direction on where the numbers were to be provided) the requirement for to amount of minerals to be extracted and for identifying the expected requirements to meet the needs of waste disposal.
19. Superimposed on the development plan were the various and multiplying statements of Government policy – an amalgam of still extant circulars, PPGs and PPSs⁵. The Labour Government was in the course of the slow process of “reviewing” and “updating” these documents. The effect was that, for example, PPG 15, which contained much circumlocution and ambiguity about *Planning and the Historic Environment*, and PPG 16, which contained much circumlocution and ambiguity about *Archaeology and Planning* were replaced. The replacement comprises PPS 5, *Planning for the Historic Environment*, and a hefty *Practice Guide*. The language has changed; but is at least as circumlocutory and ambiguous.

Decision making

20. The Government inherits a system in which most decisions are taken by the district council as local planning authority. Their refusals may be appealed,

⁴ I do not rehearse the position in London or the areas of unitary authorities.

⁵ And, in respect of minerals, MPGs and MPSs.

the appeal to be decided either by an Inspector on behalf of the Secretary of State or by the Secretary of State himself on receipt of a report from an Inspector. Where the authority has a mind to grant permission, the Secretary of State has power to call the application in for his own decision.

21. Decisions to grant planning permission are usually subject to a number of conditions. Frequently, there are also undertakings by the developer to carry out works, to ensure (in housing cases) that a proportion of the houses to be developed are affordable and make contributions for other purposes. Legislation is in place to enable local planning authorities to impose a Community Infrastructure Levy.
22. The process through that system from application to decision in the case of Terminal 5 at Heathrow took an excessive length of time. Major causes for that were the absence of clear Government policy (which meant that the direction to be taken by policy was an issue debated at the inquiry) and a substantial change of heart by the Government on surface access to the terminal. Nonetheless, the inquiry process (which, no doubt, deserved some of the blame) took all of the blame⁶. In due course, and after a few twists and turns on the way, the Labour solution was a combination of the publication of national policy statements and a new body (“quango” as their successors are pleased to describe it), called the Infrastructure Planning Commission (IPC). So long as there were in force a national policy statement in respect of the type of development concerned, the IPC would (after a streamlined procedure) decide whether development consent should be granted to any infrastructure project within its wide purview⁷.

Agencies

23. It is probably a fair generalisation to say that, before the Thatcher Government, the main public agency to bring about regeneration in an area was its local council. Then came the Local Government, Planning and Land Act 1980 and Urban Development Corporations. The main justification for

⁶ Stephen Byers: “a banquet for barristers”.

⁷ Section 14 of the Planning Act 2008

these corporations was the Conservative Government's opinion that local councils were failing to show the necessary will and determination to bring about wholesale change in decrepit areas. If there were to be results, the Government had to impose a body with the necessary executive will. Thus the painful transformation of, for example, London's docklands was brought about. In function, the heirs of the old UDCs are the Regional Development Agencies (RDAs) and the Homes and Communities Agency (erstwhile English Partnerships). Thus, for example, the London Development Agency has played a central role in bringing about the Olympic-fuelled regeneration of a large swathe of East London.

Enforcement

24. A local planning authority has a range of powers in its armoury to seek to regularise the position where development takes place in breach of planning control. In particular, it can, when it considers it expedient to do so, serve an enforcement notice requiring the rectification of what has been done unlawfully. The landowner can appeal on a number of grounds, including that planning permission ought to be granted. Alternatively, the local planning authority may itself grant planning permission retrospectively.

THE COALITION'S PROPOSALS

25. *Open Source Planning* describes the system which the Government has inherited as "broken". The main charges are:
 - (a) it is centralised and bureaucratic – the favourite metaphor is directional: "top-down";
 - (b) it "gives local communities little option but to rebel against Whitehall and regional diktats";
 - (c) it fails to achieve its aims ("... far from achieving central targets, we are seeing historically low levels of housebuilding which fail to match the needs of our economy or our society")⁸; and
 - (d) it imposes too many one-size-fits-all rules.

⁸ Ministers can hardly open their mouths without saying that last year saw the lowest level of housebuilding in peace time since 1924.

26. The philosophical starting point for all of these charges is apparent from the notion of the Big Society: the power is in Whitehall and the regions, not at the grass roots. From that fact, many malign results are said to ensue.
27. A theme of this paper is to agree that many of the aspects of the present system criticised by the Government merit criticism; I agree that, on many matters, central control does not offer the most sensible means of resolving conflicts; but I think it naive to assume that the malign aspects of the system are simply the result of central control; or that the removal of central control will bring no malign results of its own. There is an opportunity to produce a planning system that is better balanced and is more responsive to those who get involved in it; but that opportunity could be lost if pragmatism is trumped by the concept of localism. The fear, from what has been said and done so far, is that that is what will happen: that political predisposition will outstrip pragmatism.
28. *Open Source Planning* turned its guns on both elements of the development plan; but the attack on the RSSs is more determined (both in that document and subsequently).
29. The housing numbers in RSSs presented a broad target. Their provenance (whether the Regional Leaders' Boards or their predecessors, Regional Assemblies) was a target. As Eric Pickles said in a written statement on 22nd July, the Government does "not believe the arbitrary government regions to be a tier of administration that is efficient, effective or popular ... Unelected regional government ... lacks democratic legitimacy, and its continuing existence has created a democratic deficit".
30. The time that it took to produce the RSS housing figures was a target; as was the resentment they were said to engender; as were the knock-on delays

caused⁹. The results achieved (or not achieved) were also a target. For example, Grant Shapps in response to the Select Committee:

“I think we have demonstrated ... that the top down, bureaucratic, almost Stalinist system was not working. It produced fewer homes; the more you wrote these 10 and 20 year plans through Regional Spatial Strategies, the fewer homes actually got delivered on the ground”

and then later,

“there was a situation in Hertfordshire where the county council decided to judicially review the Regional Spatial Strategy for the East of England, which not only stopped every single bit of planning development in the East of England of any scale at all whilst that was reviewed, but also placed on hold the South-West Regional Spatial Strategy and the West Midland Regional Spatial Strategy, and caused problems in the south-East England one – it was all interlinked”.

31. *Open Source Planning* makes several demands of the planning system:

- “We have to reinvigorate our construction and development industries ... Without a transformed planning system our chances of getting the investment and growth we need will be hampered and possibly crippled”;
- “Communities should be given the greatest possible opportunity to have their say and the greatest possible degree of local control”;
- The new system should not inhibit “communities from finding imaginative and sustainable solutions to the inevitable tensions between development and conservation”;
- The new system should enable “local people to shape their surroundings” and enable “communities to formulate a positive vision for future development”;
- “If we get this right, the planning system can play a major role in decentralising power and strengthening society – bringing

⁹ Greg Clark on 29th June to the RTPI: “The regional numbers have provoked bitter resistance, which is one of the reasons why only 17% of authorities – 56 out of 336 – have adopted core planning strategies six years after they were introduced”.

communities together, as they formulate a shared vision of sustainable development”.

32. The answer to these challenges, we are told, is “to reject the Government’s centralising corporatist attitude and to instead adopt [what they call] Open Source planning”. In the computer software industry, apparently, “open source” is a concept which aims to make computer programming open to all “in a highly flexible and adaptable way”. I am not entirely clear how that concept translates to a planning system; but what the Green Paper said was:

“Rather than have one planning structure determined separately and then applied unvaryingly across the country, we want to create a planning system where there is a basic national framework of planning priorities and policies, within which local people and their accountable local governments can produce their own distinctive local policies to create communities which are sustainable, attractive and good to live in”.

Policy

33. The national planning framework will be one document into which *Open Source Planning* proposes to integrate the principal features of national planning policies. It will set out the Government’s economic and environmental priorities and how they relate to each other. It will be debated and voted on in both Houses of Parliament.
34. There is no room for any regional involvement. The RSSs will be abolished; and have already been revoked. So, at a stroke, one tier of the development plan has been swept away. It is not to be replaced.
35. I will consider the provision of housing in a little more detail below. So far as concerns minerals and waste (and, for that matter, highways) the Government will “encourage” county councils¹⁰ “to compile infrastructure plans”. It is not clear what status these plans will have – in particular whether they will form part of the development plan. An inference from *Open Source Planning* (which says that “having removed the regional planning architecture, control

¹⁰ And unitary authorities.

over development will revert to the local level, with no statutory planning documents between the national planning framework ... and local authorities' new local plans") is that they will not. However, it may be that the phrase "local plans" is meant to include county wide plans on matters of infrastructure, waste and minerals. In any event, there is no indication of the process by which these plans will be assembled.

36. The other tier of the development plan (the LDFs of local planning authorities) also come in for criticism in *Open Source Planning* – mainly because the requirement that LDFs comply with the relevant RSS, "combined with frequent interference from civil servants and planning inspectors, severely limits the extent to which these local plans truly reflect local opinion".
37. LDFs are, in the opinion of *Open Source Planning*, "excessively detailed" and "not expressions of a vision of the locality that emerges from the people of that locality". So, the proposal (picked out in bold text) is to "make a truly local plan, built out of a process of collaborative democracy, the centrepiece of the local planning system".
38. "New local plans will ... have to conform to national environmental, architectural, economic and social standards and constraints. But within that national framework, the local plan will be truly local. It will define what the people of a given locality – through a process of collaborative democracy – mean by sustainable development for their area". Consequently, Government will mandate that all local authorities use collaborative democratic methods in drawing up their local plans. As part of their minimum expectation, they indicate a "presumption that the 'modules' of the local plan provided by each neighbourhood will be incorporated in the final plan unless there are strong grounds for modifying them".
39. It appears that these new local plans will be subject to some form of testing before an Inspector; but the Inspector will have no power to change plans. His task will be to report to the Secretary of State on any direct breach of national

planning guidance or process. “All other issues will be left for local determination”.

40. There is, though, a sting in the tale. *Open Source Planning* promises to “legislate that if new local plans have not been completed within a prescribed period, then the presumption in favour of sustainable development, will automatically apply. In other words, if a local planning authority does not get its local plan finalised in reasonable time, it will be deemed to have an entirely permissive planning approach, so all planning applications will be accepted automatically if they conform with national planning guidance”.
41. There is also an incentive for local planning authorities to race each other in the preparation of their local plans. A requirement that the Inspector will consider is whether the plan before him takes neighbouring plans into account; so, according to *Open Source Planning*, “there would be an incentive for local councils to submit plans quickly to ensure that their views of the spatial distribution of development will guide neighbouring local plans”.

Housing numbers

42. The Government has expressed its position on the provision of housing in more detail than on any other subject. There will, as we have seen, be no requirement from the regional level that x number of houses be provided by Y District Council. That omission will not be off-set by figures in the national framework¹¹.
43. Indeed, *Open Source Planning* explains that the Secretary of State will not have the power to ... change the magnitude of any locally derived housing target included in local plans”. He will, though, have the power to reject a local plan where the Inspector reports that the authority has not “conducted a professional assessment of the housing need for their locality (i.e. following best practice guidance)”. It will not, though, be for the Secretary of State “to

¹¹ *Open Source Planning* asserts: “we will abolish ... national and regional building targets”.

specify ... how a local authority incorporates in its local plan the results of its assessment of housing need”.

44. The main substitute for prescribed housing numbers is a financial incentive. Another “Green Paper”, *Strong Foundations, Building Homes and Communities*, had announced the policy that, for the six years after each house is built, central Government will match the council tax received by the council in respect of that house¹². For affordable housing the contribution to the council’s coffers will be not 100% but 125% of the relevant council tax. According to Grant Shapps¹³, this is “an incentive which is going to be almost irresistible to the local authorities”.
45. A further proposal is the Communities’ Right to Build. If local rural housing projects secure the support of a sufficient proportion of votes in a local referendum¹⁴, then they will not require planning permission.

Retailing

46. There are two potentially important policy changes here. The first is that a developer proposing an out of town retail development will have to show a need for it. The second is that local authorities will be enabled to take competition issues into account in relation to retailing.

Changes of Use

47. *Open Source Planning* approves of the categorisation of land uses into Use Classes. However, it proposes that changes can be made without permission “within a range allowed by the local community in its local plan ... and for those areas where the council chooses not to stipulate what types of building it does and does not want to see, the presumption in favour of sustainable development will mean that any development is permitted”.

Section 106 & CIL

¹² A similar policy applies to the non-domestic rates that result from new commercial developments.

¹³ In evidence to the Communities and Local Government Committee.

¹⁴ It was to be 90% but an announcement was made last week reducing the percentage to 75.

48. In a somewhat vague way, *Open Source Planning* promises to improve on the present arrangements by which necessary incidents of a development are accounted for. The “improvement” appears to be to do with where a contribution ends up rather than with its assessment.

Decision making

49. Several changes are proposed to the decision making process. I have already set out the changes proposed in the adoption of local plans. The proposals relating to the treatment of planning applications relate to:
- (a) the presumption in favour of sustainable development;
 - (b) the means by which local residents are involved in the decision;
 - (c) appeals; and
 - (d) major infrastructure projects.

The presumption in favour of sustainable development

50. *Open Source Planning* proposes to “counterbalance” (a revealing verb) the “introduction of genuine local planning control by making it a guiding principle of the planning system that there is a presumption in favour of sustainable development”. To those of us old enough to remember the presumption in favour of development of the 1980s, a question that arises concerns the extent to which the word “sustainable” affects the presumption. The answer appears to be that that depends on the content of the national policy framework and, more particularly, the local plan. So long as they remain within the boundaries set by the national framework, councils will determine in the local plan “what is sustainable development for their area”. The proposal is to make it unlawful to refuse planning permission if an application:
- (i) conforms to the local plan;
 - (ii) is accompanied by the payment of the agreed level of local tariff; and
 - (iii) in the case of larger projects is the product of an appropriate consultation process (see below).

Involving the population

51. A feature of the criticism of levelled at the present system is its adversarial nature. This is seen as the result of the top-down approach. *Open Source Planning* complained:

“The Government’s approach of retaining strong control over planning means that, in many cases, people feel that they have no say over development taking place in their areas. Local communities feel that their views are being ignored and that they are having development imposed upon them. All too predictably this sense of disenfranchisement often leads to antagonism. The result is an inherently adversarial system with opposing parties spending large amounts of time and money fighting each other, rather than agreeing a solution”.

52. Part of the means by which happy collaboration is to replace distrustful antagonism lies in the new ways of preparing local plans. There is, though, more. *Open Source Planning* proposes legislation “to require that on projects above certain thresholds, before they can submit a planning application, developers involve the local community in collaborative design, as determined by the local planning authority”.

53. There is another intriguing proposition. *Open Source Planning* notes that “although ... immediate neighbours may see a specific and personal amenity suffer because of a development, there is, at present, no way to ensure that they can receive recompense”. To give those neighbours a sense of enfranchisement, legislation is proposed: “to provide that, if more than a small minority of residential neighbours in the immediate vicinity of a new development (of any type) raise any objection, then the conformity of the planning application with the local plan must be formally assessed by the local planning authority”. The intriguing element is the comment that follows this suggestion:

“... we anticipate that in many cases developers will choose to avoid the need for formal assessment of the application, and hence speed up the planning process by reaching voluntary agreements to compensate nearby householders for the impact of the development on their amenity, in return for their support”.

54. That is intriguing in two respects. First, it suggests that “formal assessment of the application” will be optional in the absence of local antagonism.

Secondly, it looks with equanimity on money changing hands - on a value being placed on neighbours' concerted opposition.

Appeals

55. The proposition is that “decisions on specific planning approvals taken by democratically accountable local authorities should be regarded as sound unless it can be proven otherwise”. In that light, *Open Source Planning* proposes two reforms. The first is to make the system symmetrical by allowing appeals by locals against decisions to grant planning permission. The second is to limit the grounds of appeal against a decision to just two:

- that correct procedure was not followed; and
- the decision was reached in contravention of the local plan.

Appeals on the first ground would be to the Local Government Ombudsman and those, on the second ground to the Inspectorate. In both cases, there would be a “mechanism for weeding out frivolous or malicious appeals”.

Major Infrastructure Projects

56. On major infrastructure projects, the Government was not satisfied with the IPC. *Open Source Planning* suggested two courses of action. It explained that the Conservatives were “likely to use private or hybrid Bills to promote very major linear projects like high speed rail” – to ensure what they called a “proper Parliamentary process”. They also proposed that “all other major infrastructure projects like power stations are considered by planning inquiries which have binding timetables, and which are governed by the national planning framework ... and are given final planning permission by a democratically accountable Minister, informed by the conclusions of the inquiry”.

57. The process was to involve the abolition of the IPC and the creation of a specific unit for major infrastructure projects “within a revised departmental structure that includes the Planning Inspectorate”. That unit would carry out “short and focussed planning inquiries” under a senior planning inspector “who would have much of the freedom enjoyed by judges in the courts to

provide the direction of a case by way of pre-trial hearings”. The inquiries would be governed by a new national planning framework.

58. *The Coalition: Our Programme for Government* confirmed that the Coalition would replace the IPC “with an efficient and democratically accountable system that provides a fast-track process for major infrastructure projects”. On 29th June the Government announced that the IPC is to be abolished and that a Major Infrastructure Planning Unit will be established within the Planning Inspectorate. On any application, the final decision will be by the Minister.
59. In explaining the position to the Communities and Local Government Committee, Greg Clark explained that, essentially, two changes were being made to Labour’s system: “one is that all national planning statements would be ... subject to ratification by the House, and that the final decision would be based on more or less the same advice and the same timetable but by a Minister accountable to the House”.

Agencies

60. There is an irony in the fact that a Coalition in which the Conservatives are the major party wishes to abolish the heirs to the Development Corporations introduced in the period when the Conservatives were last in power. A large part of the reason appears to be that the RDAs were regional and so are tarred with the same brush as the RSSs. According to the Secretary of State¹⁵, “the secret of success is natural local economies – not artificial political regions ...”. Another reason is that the Coalition perceives RDAs as monolithic and not collaborative. The Secretary of State again: “the bureaucracy of Regional Development Agencies gave local authorities little reason to engage creatively with economic issues”¹⁶.

¹⁵ In a press release on 6th September.

¹⁶ In a press release on 7th September.

61. In their place, the Government sought proposals for ‘local enterprise partnerships’ – “a way of tying council and business interests together”¹⁷. 56 proposals have been made (many overlapping with others). Ministers “will now review these ideas to select those that have the strongest commitment to enterprise and to working in partnership”¹⁸.
62. So far as can be seen, these bodies will not necessarily be recipients of Government money. Vince Cable has said that “trade and investment promotion, sector leadership, innovation, business support and access to finance will in future be led nationally, though with devolved local management in many cases”¹⁹.

Enforcement

63. The proposal is to “limit the concept of retrospective planning to permit only the rectification of genuine mistakes”.

DISCUSSION

64. My answer to the question in the title of this paper is “curate’s”. There are several aspects of the Coalition’s proposals that are welcome; but others raise varying degrees of concern.
65. There is a great deal of verbiage in Government planning policy. There was also a great deal of verbiage in RSSs. Indeed, large sections of RSSs added little or nothing to Government guidance. PPS 5 makes Government policy on the weight to be given to the historic environment less clear than the old (and itself unnecessarily long) PPG 15; but even in the days of PPG 15, the main sentiments were repeated in RSSs (and in Local Plans or LDFs). Given the requirement that decisions be in accordance with the development plan unless material considerations indicate otherwise, there is some function in the sentiment being repeated somewhere in the development plan; but duplicate repetition was unnecessary.

¹⁷ Ibid.

¹⁸ The 6th September press release.

¹⁹ The 6th September press release

66. If the Coalition can achieve the aim of expressing national policy in “a simple and consolidated framework”, then it will have performed a signal service. Similarly, I agree that much of what was done in RSSs was unnecessary duplication of what could readily be done at the national or local level.
67. So far as major infrastructure projects are concerned, there is good sense in national policy statements. I have no quibble with their being ratified in Parliament so long as the procedure involved does not inhibit timely amendment. I also agree that a major concern with the IPC was the “democratic deficit”.
68. To my mind, the problem had two main features. One was the prospect of the decision being taken by the Commission rather than by someone who was democratically accountable. So, on that score, I welcome the change proposed. The other concerned the procedure by which the IPC was to reach its decision. A feature of the major projects that went through the inquiry process (such as Windscale, Sizewell B, Hinkley Point C and Terminals 4 and 5) was the broad acceptance of the decision when it was made, even by those who had bitterly opposed the proposal.
69. That acceptance came, in part, from the sense amongst objectors that they had been given the opportunity to challenge the promoters in public. That is an opportunity that will be afforded to objectors if the Government adopts *Open Source Planning*'s proposal that linear schemes be dealt with by Bill. There is, of course, a need for the process in respect of other schemes to be as expeditious as is consistent with ensuring that the proposal and objections to it are properly tested. The system that gave us the T5 inquiry did not pass that test; and there is a need to introduce greater efficiency. *Open Source Planning*'s proposal that “all other major infrastructure projects like power stations are considered by planning inquiries which have binding timetables, and which are governed by the national planning framework” is consistent with achieving that end. However, it is critical that the “planning inquiries which have binding timetables” allow for sufficient reasonable challenge.

70. I have the following major concerns:
- (a) I consider the diagnosis of the cause of present ills too simplistic; the top-down nature of the present system has, no doubt, affected adversely both the efficiency with which the system produces results and the repute in which it is held; but there are many other features that have contributed to the present state of affairs;
 - (b) I consider that the proposals for the identification of policy (to the extent that they can be crystallised) run the risk that important interests will either be missed or given insufficient weight;
 - (c) I consider that the Government has more faith in the existence of thwarted dynamism in local authorities than is either safe or warranted;
 - (d) I consider that the Government has more faith in the existence of the thwarted altruism of the populace than is either safe or warranted;
 - (e) I consider that the Government underestimates the extent to which planning decisions are by their nature adversarial;
 - (f) I have concerns about the practical application of some of the more specific proposals; and
 - (g) I am concerned that, without outside control or supervision, rampant localism could lead to capricious and unfair results.

71. *Open Source Planning* complains that “as power over planning has been taken away by Labour from locally elected representatives and given to bureaucrats in Whitehall and in regional government, so the mistrust of the planning system has grown along with an increase in protest and in the use of judicial review”. I suspect that the sense of power being held by “them” rather than by “us” does lead to resentment; and I have no problem, in general terms, with seeing what can be done to rebalance; but there are very many other factors as well.

72. In its own description of the purpose of the planning system, *Open Source Planning* recognises that the system has to deal with “competing” priorities in “the most equitable ... way possible”. Competing priorities are manifested in the planning system as competing individuals. The developer promoting the extraction of minerals represents an economic imperative; and the residents and/or council opposing him represent the imperatives of the environment and amenity. By its very nature, therefore, a planning decision is potentially divisive. Some disagreements (for example on matters of design) may be triangulated or compromised (although often, in my personal opinion, to the detriment of the design); but many decisions involve irreconcilable differences. The abolition of RSSs is not going to change that fact of life.
73. It is true that, often, the disputes between parties multiply. I oppose your development because I do not want it close to where I live. I recognise that my personal distaste may be an insufficient reason to prevent the economically productive use of your land; so, I hunt around for other arguments to clothe my real motivation in planning righteousness. I write to the council; you respond; what you say in response to me is sufficiently ambiguous for me to be able to suggest that it is inconsistent with what you said in one of the many statements that accompanied your application; I choose to allege inconsistency and by degrees persuade myself to believe the allegation; and so the relationship becomes more antagonistic and mistrusting; the gulf between us widens.
74. There are techniques by which the frequency of this sort of progression can be reduced. There are also techniques by which some disputes can actually be resolved in a way that is acceptable to all. Some years ago, I saw this potential and trained to be a mediator. At present there is a resistance to mediation in planning. The Government would assist in achieving the aim of reducing the adversarial nature of planning disputes if it were to throw weight and money behind attempts to break down that resistance.

75. However, the aim should not be to remove entirely the adversarial nature of planning decisions (or the system within which they are made) as that would not be achievable. The system has to be strong enough to decide in favour of one party and against the other. That decision needs to be taken on this basis: which answer (development or not) would better serve the public interest.
76. The first task, therefore, is to find a reliable means of identifying the public interest. That is the role of policy; and, given a system that puts the development plan at the centre of the decision making process, it is particularly the role of the development plan – whatever it comprises.
77. The proposals in *Open Source Planning* have two very noticeable elements: (a) in any area what we know now as the development plan will comprise only the new style local plan; (b) the content of that local plan will essentially be decided by a process within the district council’s area. It is true that there will be an obligation on councils to co-operate with each other; it is also true that *Open Source Planning* suggests that councils which are quick in completing their local plans will, thereby, be able to alter the content of their neighbour’s local plan. However, I cannot see how either of those features will actually work in practice so as to force local authority A to accept, in the interests of local authority B, development that its population opposes.
78. In truth, it seems to me that, to the extent that the local plan for the area of local authority A reflects the public interest, it will reflect the local view of what the public interest should be. Indeed, the fact that these local plans are to be written from the neighbourhood up will mean that their outlook is likely to be parochial. This is human nature. I recognise that there is a need to use areas of land to deal with the waste that we all produce; we all recognise that; but the neighbourhoods that decide that they contain the site in which other people’s waste should be dealt with will be few and far between.
79. As they raise other issues as well, I expand on this point in respect of housing numbers. In the Communities and Local Government Committee on 13th September, the ministers acknowledged a need to build large numbers of

houses. I am prepared to accept that the objections to the housing numbers in RSSs was, in part, that they were impositions from above; but it seems to me that the main cause for resentment was that local populations (and hence the councils that represent them) thought the numbers too high. The dog that, so far as I am aware, has not barked is this: no minister has said that the RSSs were seeking more houses than will be needed. Indeed, Mr. Shapps told the Select Committee that there were 1.8 million families currently on housing waiting lists.

80. The conflict between local authorities and regional bodies about housing numbers came down to this: local authorities did not have the political will to provide the numbers of units that the regional bodies insisted upon. Indeed, they had the political will to oppose those numbers. That political will came from the fact that their voters opposed within their own areas the scale of development implied by the RSS figures.
81. The decision to take regional bodies out of the equation means that the housing targets that the local authorities set themselves will be below those envisaged by the regional bodies. Without the regional bodies there to impose a discipline in the future, I expect that either local plans will become steadily more averse to the release of land for housing development or the national planning framework will become steadily more prescriptive.
82. Recently, very few houses were built. There are, at least, two causes of that result. One is the problems that the RSSs faced with challenge in the courts. That was a temporary phenomenon. One of the members on the Communities and Local Government Committee (Toby Perkins) suggested that the reality is “that we can’t say Regional Spatial Strategy did not work because it was actually just coming into the period where it would have actually started building housing”. The ministerial team did not tangle with him on that proposition but preferred to press the “too bureaucratic” message.

83. The second reason why so few houses were built recently is the tremendous shock which hit the economy and which knocked the stuffing out of the housebuilding industry. That also is a temporary phenomenon.
84. I expect that, over the next few years, the number of houses built will increase. However, that will be no measure of the efficacy of the Government's proposed arrangements.
85. My judgement is that housebuilding under this new regime will not keep up with the figures that were required by the RSSs. Local authorities will be required to carry out their own housing needs surveys; but there are two points. The first is that it is not clear what they will be required to do with them. It would scarcely chime with localism for the Government to require the council to plan to build the number thrown up by the survey regardless of the council's view of its area's "environmental capacity". The second is that I suspect that surveys of need within the areas of individual local authorities fail to cast light on the broader picture – such as the need for economic reasons for some areas to accommodate in-migration. The opportunity for a strategic vision is materially reduced.
86. The proposal to provide financial incentives to local authorities to grant permission for housing is a tacit acknowledgement of the fact that the removal of targets set at a level above that of the district will, all else being equal, increase a council's propensity to refuse applications for housing. A carrot is replacing a stick as the incentive.
87. However, the proposal (and Mr. Shapps's view that the money will be "almost irresistible" to local authorities) does raise concerns. If a site is acceptable for housing in planning terms then its development should be given planning permission. To limit the burden on the finite amount of land in these small islands, the planning permission should be for as many units as the site can properly accommodate (taking account of the mix and size of units required locally and all site specific considerations). The permission, though, should not countenance more units than that.

88. Last week, I finished a planning inquiry in which, essentially, two issues were raised: the impact of my client's proposal on the character and appearance of the conservation area in which it sat and the advisability of a development of the size proposed in the vicinity of a store for ammonium nitrate based fertiliser. The Inspector will make a decision on those issues. How would one factor into that assessment the "almost irresistible" offer of extra funds to the local authority if permission is granted?
89. Whatever the right decision in that case, I cannot see how any decision would be improved by the council's having a financial incentive dangled in front of it - especially at a time of severe restraint on council funding. Another member of the Communities and Local Government Committee (Bob Blackman) put this point. He asked what conflicts the ministers saw between the council as a planning authority determining a planning application and then having a financial benefit to build the properties. He asked: "Do you think people will be suspicious"? Mr. Pickles apparently did not see a conflict. This sort of thing happens all over the place "if you wander Europe towards the Ural Mountains or beyond". To my mind, not necessarily a reassuring endorsement.
90. In any event, the concern is not so much that the council has some financial interest in the result (it will get the council tax from the occupant anyway) but that the Government believes that by increasing the financial incentive, it can alter the authority's decision. In other words, it considers that a factor which has nothing to do with the acceptability of development on the site will be critical to the decision whether permission is granted. Indeed, when asked whether there is a Plan B "if fewer homes are built as a result of the changes", Grant Shapps replied that "ultimately, if everything else fails you would increase the incentives until they got built".
91. One has to wonder where all this will end. It is intended that the Government's financial sweetener is a factor that the council should take into account when deciding whether to grant permission. There is encouragement

to developers to buy off the objections of local residents. If these contributions to local affluence are to be acceptable, will others also?

92. Still within the housing sphere, I am intrigued about how the Communities' Right to Build will work in practice. In any referendum, who will be entitled to vote? Will, for example, the boundary be the parish boundary – even for sites on the boundary's edge? Will there be any safeguards to ensure that, for example, interests of heritage importance are not overridden? What will be the nature and effect of the vote? Some developments are only acceptable when the permission is subject to conditions and/or undertakings. Will the vote be about all the terms on which permission should be granted? If not, what will be the mechanism by which necessary constraints are applied?
93. The decision to replace RDAs by the new local enterprise partnerships and to take the promotion of investment that RDAs did into central Government is a political decision. There is clearly room for different views about which is the more efficient and effective arrangement. I have my own views. I think that it is largely a misconception to see RDAs as a "bureaucracy" that "gave local authorities little reason to engage creatively with economic issues". Indeed, my personal experience leads me to the clear conclusion that the regeneration of the Lower Lea Valley by means of the Olympic and Legacy development would have been still-born but for the dynamism of the LDA and its ability to take the four boroughs with it.
94. The personnel will be available to the new enterprise partnerships; and one can hope that they will be used. However, the record of local authorities as the galvanisers of local action is patchy. Part I of the Local Government Act 2000 of the "power to do anything which they consider is likely to achieve ... the promotion or improvement of" the economic, social or environmental well-being of their area". The circular that explained the power described the Government's purpose in introducing the well-being power as being "to reverse that traditionally cautious approach, and to encourage innovation and closer joint working between local authorities and their partners to improve communities' quality of life". With, no doubt, notable exceptions, there was

not a dramatic increase in innovation and joint working; and that at a time when local authorities had more money to spend on such schemes than they are likely to have for the foreseeable future.

95. The final topic on which I want to say a word takes me back to my main theme. It is the need for an equitable system which promotes economically productive development in the public interest.
96. It seems to me that there are some (albeit probably, in the great scheme of things, not very momentous) concerns about the Communities' Right to Build. All of us who live in a village can probably identify individuals who would be unable to garner the support of 75% of the population for even the most anodyne proposal.
97. On a more far reaching level, I have already explained my view on the importance of objectors to major infrastructure schemes being able to challenge the promoters on the merits of their scheme.
98. My major concern is to do with the drafting, preparation and application of the new style local plans and the limitations on the rights of appeal against the refusal of planning permission. I am concerned that the influence in plan preparation that is being offered to neighbourhoods will give excessive power to narrow local (sectional) interest at the expense of the wider public interest.
99. The present system provides for the possibility that material considerations indicate that the decision should not follow the development plan. That is a safety valve, a recognition that, even up to date local plans cannot anticipate opportunities that arise. Several years ago, I was involved in promoting a major development of research and development space adjacent to the Genome Campus in Hinxton, south of Cambridge. The idea was to enable pharmaceutical companies great and small to exploit proximity to the work of genome sequencing being done on Campus. The local plan designated the site as being of landscape importance where development should not take

place and there was local opposition to this potentially life-enhancing and economically very significant development.

100. The arrangements proposed by *Open Source Planning* seem apt to prevent permission for an unexpected development of that sort. Even were the council to consider the development desirable notwithstanding that it is inconsistent with the local plan, locals could force an inquiry and the ultimate refusal of permission. Were the council to oppose, the Inspector will not, it would appear, be asked to consider whether the development would be in the public interest. The most that he will be able to do is parse the local plan.
101. It seems to me that that is neither fair to the landowner nor necessarily in the wider public interest.

SUMMARY CONCLUSIONS

102. The Coalition has an opportunity to improve the planning system very considerably. There is much that is unnecessary and can be usefully removed. There is scope to make the system more responsive to legitimate local interest. There is considerable willingness within the system to help in this work. However, a doctrinaire insistence on localism in all things runs the very real risk of squandering that opportunity and leaving us with a system that mistakes local preference for the public interest.
103. There are passages in *Open Source Planning* and in subsequent ministerial statements that appear to recognise the importance of these concerns. The danger is that the reforms will not protect them.

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